

# In the United States Court of Federal Claims

No. 97-293 C  
(Filed: April 23, 2003)

\*\*\*\*\*

**ENERGY CAPITAL CORP., as  
General Partner of ENERGY  
CAPITAL PARTNERS LIMITED  
PARTNERSHIP,**

Plaintiff,

v.

**THE UNITED STATES,**

Defendant.

\*\*\*\*\*

## **ORDER FOR ENTRY OF AMENDED FINAL JUDGMENT**

On December 26, 2002, Plaintiff filed a motion for entry of an amended final judgment of \$8,183,750 in this matter, pursuant to the mandate issued by the United States Court of Appeals for the Federal Circuit on December 17, 2002, and its Opinion of August 14, 2002. The Federal Circuit ruled that the “present value of the damages award should have been calculated using a risk-adjusted discount rate,” and “in that limited respect,” remanded the case to this Court “for determination of a final damages award based on the risk-adjusted discount rate of 10.5 percent.” *Energy Capital Corp. v. United States*, 302 F.3d 1314, 1334 (Fed. Cir. 2002).

Defendant’s response to Plaintiff’s motion indicated that Defendant was unable to replicate this Court’s calculation based on the information provided in Appendix A to this Court’s Opinion issued on August 22, 2000. *Energy Capital Corp. v. United States*, 47 Fed. Cl. 382 (2000). Defendant instead requested this Court to perform its own re-calculation to ensure compliance with the Federal Circuit’s mandate, rather than accept Plaintiff’s re-calculation of the damages award at the risk-adjusted discount rate.

The Court will perform its calculation anew and hereby **ORDERS** the entry of an amended final judgment in favor of Plaintiff in the amount of \$8,009,822.26 according to the calculation presented herein.

In its initial opinion of August 22, 2000, this Court noted that, through Plaintiff's expert Jerry Arcy, Defendant introduced the formula for discounting to present value. *Id.* at 421. Acknowledging that it could not replicate every step in Mr. Arcy's process, the Court calculated a method that functioned as a reliable substitute, first dividing the total lost profit into equal annual amounts. *Id.* at 428. Then, using identical values for lost profit, discount rate, and time from date of judgment, the Court compared the result obtained from Mr. Arcy's method to the result obtained by using its own method. Because the Court's method served to inflate the present value by a small percentage, the Court's final calculation was adjusted downward to account for this difference.<sup>1</sup>

Using the same method and noting that the period for the lost profits begins from the date of judgment, August 21, 2000, and runs through June 30, 2011 (a period of approximately 10.86

---

<sup>1</sup> Appendix A actually overstates the adjustment necessary to reconcile the Court's equal annual amount calculation with Arcy's variable annual amount calculations of lost profit. The proper adjustment calculation is .993, derived as follows:

| <b>Calculation of Adjustment Factor</b> |                   |                                       |                             |  |                        |
|---|-------------------|---------------------------------------|-----------------------------|--|------------------------|
|   | Total Lost Profit | Number of Years from Date of Judgment | Lost Profit Amount Per Year | Federal Circuit Mandated Discount Rate | Present Value Recovery |
| Court's Method (fixed yearly amounts)   | \$24.628 million  | 11.75 years                           | \$2.096 million             | 10.5%                                  | \$13.786 million       |
| Arcy's Method (variable yearly amounts) | \$24.628 million  | 11.75 years                           | variable                    | 10.5%                                  | \$13.692 million       |

Arcy's method produced a present value recovery of \$13.692 million. The Court's method, according to the @PV function found in the spreadsheet program of Quattro Pro, properly produces a present value recovery of \$13.786 million: @PV(2.096, 0.105, 11.75), employing the three inputs of dollar amount per time period (\$2.096 million), discount rate (10.5%), and number of time periods (11.75 years).

The value resulting from Arcy's method is 99.3% of the value that results from the Court's method. ( $13.692 / 13.786 = 0.993$ ) (rounded to the 3<sup>rd</sup> decimal). As the Court's method slightly inflates present value, the award that the Court calculates by utilizing its method should be adjusted by a factor of 0.993.

years) (*Id.* at 428-29), the Court now has all the variables to compute the present value of Plaintiff's award : 1) sum for discounting, \$13,897,000, pursuant to this Court's amended judgment, filed December 19, 2000; 2) risk-adjusted discount rate, 10.5 percent, as mandated by the Federal Circuit; and 3) period of discounting, from date of judgment, of 10.86 years.

| Calculation of Present Value of Damage Award |                   |                                       |                             |  |                        |
|--|-------------------|---------------------------------------|-----------------------------|--|------------------------|
|  | Total Lost Profit | Number of Years from Date of Judgment | Lost Profit Amount Per Year | Federal Circuit Mandated Discount Rate | Present Value Recovery |
| Court's Method (fixed yearly amounts)        | \$13.897 million  | 10.86 years                           | \$1.280 million             | 10.5%                                  | \$8,066,286.26         |

The present value calculation, again produced via Quattro Pro ("@PV - Present Value"), results in a sum of \$8,066,286.26. The actual spreadsheet calculation is @PV(1.280, 0.105, 10.86).

Factoring in the adjustment explained in note 1, *supra*, the calculation results in a net amended final judgment of \$8,009,822.26 (\$8,066,286.26 x .993).

The Clerk of the Court is directed to enter an amended final judgment, pursuant to Rule 58 of the Rules of the Court, in favor of Plaintiff in the amount of **\$8,009,822.26** on Count I, Breach of Contract. Because Count II, the constitutional count, has already been dismissed, the entire case is concluded. Costs have already been paid by the Government.

**IT IS SO ORDERED.**

---

EDWARD J. DAMICH  
Chief Judge